August 20, 2011

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

Before the Atomic Safety and Licensing Board

In the Matter of	)	
	)	
Florida Power & Light Company	)	Docket Nos. 52-040-COL
	)	52-041-COL
(Turkey Point Units 6 and 7)	)	
	)	ASLBP No. 10-903-02-COL
(Combined License)	)	

FLORIDA POWER & LIGHT COMPANY'S RESPONSE OPPOSING CASE'S MOTION FOR RECONSIDERATON AND CASE'S PROFFERED NEW CONTENTIONS

On August 12, 2011 (at 11:58 PM) intervenor Citizens Allied for Safe Energy, Inc. ("CASE") filed a document dated "August 11, 2011" and entitled "Citizens Allied for Safe Energy, Inc. Motion for Reconsideration of Amended Contentions 1, 2 and 5 and New Contentions Following Fukushima Near-Term Task Force Recommendations" (hereinafter "CASE's Motion").[1] In this filing, CASE seeks for a *third time* admission of its proposed contentions 1, 2 and 5, twice rejected by the Atomic Safety and Licensing Board

[1] Despite the lateness of CASE's filing, its Motion is rife with typographical errors, garbled text and other deficiencies that make the text of the Motion difficult to understand. Four days later, on August 16, 2011, CASE filed – without leave of the Board – a document bearing the same title as the original Motion, whose contents, in a separate e-mail forwarding the document to the Board and parties, were inaccurately represented by CASE to be as follows: "**Except for the addition of page numbers, no information has been added or deleted. Words, sentences and paragraphs have been correctly arranged with some spelling corrections.**" Contrary to CASE's representation, the new filing corrects only some of the errors in CASE's Motion, and also makes several substantive changes to the text of the Motion (just as an example, four pages following the quote on top of (unnumbered) page 4 of the original Motion with respect to Contention 1 have been deleted and only partly moved in the Revised Motion to the discussion of Contention 2 at page 9). FPL respectfully declines to address this most recent version of CASE's Motion, for it is late, unauthorized, and constitutes an improper attempt to covertly modify the text of a submitted pleading, aggravated by making untrue representations as to the document's contents.

("Board").[2] In addition, without notice to or consultation with the other parties, CASE propounds two new contentions (Contentions 9 and 10) and in so doing it fails to comply with NRC requirements and the provisions of the Board's Initial Scheduling Order and Administrative Directives (Prehearing Conference Call Summary, Grant of Joint Motion Regarding Mandatory Disclosures, Initial Scheduling Order, and Administrative Directives) of March 30, 2011 ("Initial Scheduling Order"). Applicant Florida Power & Light Company ("FPL") hereby responds in opposition to the relief sought in CASE's Motion and suggests that sanctions by the Board under 10 C.F.R. § 2.319 are warranted given the frivolous nature of CASE's filing and CASE's repeated violations of the Board's orders and NRC regulations, particularly following multiple warnings by the Board.

DISCUSSION

I. THE MOTION TO RECONSIDER THE REJECTION OF AMENDED CONTENTIONS 1, 2 AND 5 MUST BE SUMMARILY DENIED

The Board's order, Memorandum and Order (Denying CASE's Motion to Admit Newly Proffered Contentions), LBP-11-15, 73 NRC __ (June 29, 2011) ("LBP-11-15") summarizes the history of CASE's two previous attempts to gain admission in this proceeding of its Contentions 1, 2, and 5 and rejects the second of these attempts – an effort by CASE to have these contentions admitted in light of the events at the Fukushima Daiichi nuclear power station in Japan – for being untimely and failing to comply with the admissibility requirements of 10 C.F.R. § 2.309 (f)(1). LBP-11-15, slip op. at 6-17. As further discussed below, the Board's findings in LBP-11-15 leading to the rejection of

[2] The versions of Contentions 1, 2 and 5 that CASE seeks to be admitted are identified on page 4 of the Motion. Although described somewhat differently in the text of the Motion, they appear to be the same "Amended Contentions" submitted on April 18, 2011 and rejected by the Board. Each contention will be referred to herein as an "Amended Contention."

Amended Contentions 1, 2 and 5 apply as well to CASE's instant Motion. In addition, CASE's Motion is untimely[3] and fails to address, let alone satisfy, the requirements for motions for reconsideration. For all these reasons, CASE's Motion must be denied.[4]

A. CASE's Motion For Reconsideration is Untimely and was Filed Without Leave of the Board

CASE does not state of what Board action it seeks reconsideration. Presumably, it is the Board's decision in LBP-11-15 that, for the second time in this proceeding, rejected CASE's proffered Contentions 1, 2 and 5.[5] CASE, however, does not identify the portions of LBP-11-15 which it asks the Board to reconsider. In any case, CASE's Motion is untimely, unauthorized, and legally and factually deficient.

1. CASE's Motion is untimely

Motions to reconsider a Board order must be made no later than ten days after the order's date of issuance. 10 C.F.R. § 2.323(e).[6] Once the opportunity to file a motion for

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[3] Contrary to CASE's representation, see CASE's Motion at 2, FPL never agreed that CASE's Motion was timely. All that FPL (and the NRC Staff) agreed to was a one-day extension on the date to file *another* motion, "Contention Regarding NEPA Requirement to Address Safety and Environmental Implications of the Fukushima Task Force Report," ('new NEPA contention") ultimately filed by CASE on August 12, 2011 at 3:10 PM, nine hours earlier than CASE's Motion. And contrary to the representation in its Motion (CASE's Motion at 2) CASE never e-mailed FPL a copy of *this* Motion, an express condition of FPL's acquiescence to the extension of time for filing the new NEPA contention.

[4] Despite being expressly and repeatedly warned by the Board of its obligation to comply with the consultation requirements of 10 C.F.R. § 2.323 (b), *see* LBP-11-15 at n. 13, CASE has failed to make "a sincere effort to contact other parties . . . and resolve the issues(s) raised in the motion . . . ." This failure, further discussed in Section III below, also warrants that the Motion be summarily denied.

[5] CASE could not possibly seek reconsideration of the Board's rejection of the initial versions of Contentions 1, 2 and 5, since the time to seek reconsideration of (or appeal from) the Board's February 2011 ruling rejecting those contentions has clearly passed. *See* LBP-11-15 at n. 1.

[6] 10 C.F.R. § 2.323(e) reads:

Motions for reconsideration. Motions for reconsideration may not be filed except upon leave of the presiding officer or the Commission, upon a showing of compelling circumstances, such as the existence of a clear and material error in a decision, which could not have reasonably been anticipated, that renders the decision invalid. A motion must be filed within ten (10) days of the action for which reconsideration is requested. The motion and any responses to the motion are limited to ten (10) pages.

reconsideration has run, the Board's rulings become the law of the case and may not subsequently be challenged. 10 C.F.R. § 3.323 (e); *Georgia Power Company* (Vogtle Electric Generating Plant, Units 1 and 2), LBP-94-16, 39 NRC 257, 259 (1994). Here, the Board's decision in LBP-11-15 was issued on June 29, 2011 and CASE's Motion seeking reconsideration of the Board's rejection of Amended Contentions 1, 2, and 5 was filed almost two months later. CASE's Motion must be rejected as untimely.

Moreover, the document on which CASE's Motion is based, "Recommendations for Enhancing Reactor Safety in the 21st Century," a report by the NRC Task Force investigating the insights to be gained from the accident at the Fukushima Daiichi nuclear power station ("the Task Force Report"), was issued on July 12, 2011, closely on the heels of the Board's decision in LBP-11-15. CASE could have sought leave from the Board to file a motion for reconsideration based on the issuance of the Task Force Report. Such a motion, if timely filed, might have resulted in the grant of an extension of time to file a motion for reconsideration. CASE chose not to do so, but waited another month before seeking reconsideration. Such delay was unjustified and unreasonable. And, even if the Board had granted CASE's request for a one-day extension of time to file its Motion, it is still several weeks late.[7]

2. CASE's Motion is unauthorized

CASE did not seek leave from the Board to file a motion for reconsideration of LBP-11-15, and absent such leave the motion must be rejected as improperly filed, since

[7] CASE's motion seeking a one-day extension of time ambiguously refers to "attempting to file contentions." CASE did not seek agreement from FPL for a one-day extension to the time to file CASE's Motion, but only the new NEPA contention.

10 C.F.R. § 3.323(e) directs that "[m]otions for reconsideration *may not be filed* except upon leave of the presiding officer or the Commission" (emphasis added).

B. CASE's Motion Neither Addresses nor Meets the Stringent Requirements for Entertaining Motions for Reconsideration

The Commission's regulations provide that a motion for reconsideration may only be entertained "upon a showing of compelling circumstances, such as the existence of a clear and material error in a decision, which could not have reasonably been anticipated, that renders the decision invalid." 10 C.F.R. § 2.323(e). The compelling circumstances standard for granting leave to file a motion for reconsideration "is intended to permit reconsideration only where manifest injustice would occur in the absence of reconsideration, and the claim could not have been raised earlier." *Changes to Adjudicatory Process*, 69 Fed. Reg. 2182, 2207 (Jan. 14, 2004). Reconsideration "should be an extraordinary action and should not be used as an opportunity to reargue facts and rationales which were (or should have been) discussed earlier." *Id*.; *NextEra Energy Seabrook, LLC* (Seabrook Station, Unit 1), Order (Denying Extension Request and Denying Motion for Leave to File for Reconsideration) (March 9, 2011), slip op. at 2. Thus, a reconsideration motion cannot merely repeat prior arguments, but must provide a good reason for the adjudicator to change its mind. *Louisiana Energy Services, L.P.* (National Enrichment Facility), CLI-04-35, 60 NRC 619, 622 n.13 (2004). Nor can a motion for reconsideration present new arguments or evidence. *Dominion Nuclear Connecticut, Inc.* (Millstone Nuclear Power Station, Units 2 and 3), LBP-04-22, 60 NRC 379, 380-81, *affirmed*, CLI-04-36, 60 NRC 631, 641, 645 (2004).

CASE's Motion fails to address these requirements, and fails to meet them as well. No unanticipated, compelling circumstances exist that render the Board's decision in LBP-11-15 erroneous. Nothing of substance has changed since the Board issued LBP-11-15. CASE cites, as the event as providing the basis for its Motion, the issuance of the Task Force Report. CASE's Motion at 2. However, CASE's Motion merely recites excerpts from the Task Force Report (a document that has yet to be endorsed by the Commission and that has not resulted in any changes to the NRC regulations) and alleges that the Task Force Report's recommendations warrant admission of Amended Contentions 1, 2 and 5. Yet, CASE does not even attempt to demonstrate that those recommendations apply to Turkey Point Units 6 & 7. Moreover, the recommendations in the Task Force Report are, by CASE's own admission, unrelated to or inconsistent with the claims advanced in CASE's three Amended Contentions.

CASE cites the following language in LBP-11-15 as providing justification for filing its Motion: "*If the Task Force's recommendations result in changes to regulations that are relevant to Florida Power & Light Company's (FPL's) Combined License (COL) application, FPL's compliance with those regulations would become part of the NRC Staff's technical review. ... Additionally, such changes, or any other new and material information that emerges from the Fukushima event and its aftermath, might give rise to an opportunity to proffer new contentions in this proceeding.*" CASE's Motion at 1-2, *quoting* LBP-11-15 at 2, emphasis by CASE. The plain language of the Board's order, however, shows that no events warranting the admission of new contentions have

transpired.[8] No changes to the NRC regulations relevant to the Turkey Point 6 & 7 COL application (the "Application") have been issued, and no material new information has emerged from the Fukushima Daiichi events that would provide the opportunity for CASE to proffer new contentions. The Board's decision bars CASE's attempt to have Amended Contentions 1, 2 and 5 revisited.

1. Amended Contention 1 was properly rejected and remains inadmissible

Amended Contention 1 claimed that the "public evacuation plan" for Turkey Point Units 6 & 7 was inadequate, and raised half a dozen allegations in support of that claim. Motion to Amend Contentions 1, 2, and 5 of the CASE Revised Petition to Intervene (August 20, 2010) (Apr. 18, 2011) at (unnumbered) page 4. CASE's Motion focuses mainly on two of these allegations: "timely evacuation of the almost 200,000 people in the area and the proper pre-distribution of potassium iodide (PI) [sic]." CASE's Motion at 5.

As to the inability to evacuate the 10-mile plume exposure pathway emergency planning zone, CASE points to the Task Force Report's recommendation that the station blackout regulations in 10 C.F.R. § 50.63 be strengthened (Task Force Report at 32-39), and argues that this recommendation requires admission of Amended Contention 1. CASE's Motion at 8. The Task Force's discussion of station blackout makes no reference to evacuation issues, nor does it in any way suggest that in the event of a station blackout a potential evacuation of Turkey Point Units 6 & 7 (or any other plant) would be impeded.

[8] The cited language, pointing out that new contentions might be triggered only by changes to NRC regulations following the issuance of the Task Force Report, further demonstrates how CASE flouts the Board's directives.

The Board's reasoning for rejecting this aspect of Amended Contention 1 remains as valid today as it was when it was issued:

> CASE does not identify any regulatory requirement that FPL's COL application fails to satisfy with respect to its discussion of emergency communications and station blackouts, nor does CASE raise specific challenges to those portions of FPL's COL application pertaining to emergency communications. See Turkey Point Units 6 & 7, COL Application, Part 5: Radiological Emergency Plan, Rev. 2 at F-1 to F-8 (Dec. 2010). CASE also neglects to provide explanatory support for its claim (CASE Petition at 4) that a station blackout would "likely interfere with the communications from the reactor site." Accordingly, to the extent Contention 1 is grounded on CASE's first argument, it is not admissible because it fails to "provide sufficient information to show that a genuine dispute exists with [FPL's COL application] on a material issue of law or fact." 10 C.F.R. § 2.309(f)(1)(vi).

LBP-11-15 at 9.

The second rationale alleged by CASE for admitting Amended Contention 1 is a concern about the adequacy of the mechanisms for the distribution of potassium iodide ("KI") in the event of a radiological emergency at Turkey Point 6 & 7. The Task Force Report refers to KI distribution only in the context of recommending that the NRC Staff

> [c]onduct training, in coordination with the appropriate Federal partners, on radiation, radiation safety, and the appropriate use of KI in the local community around each nuclear power plant.

Task Force Report at 62, Section 11.4. CASE fails to explain how this public education recommendation supports its claim that the mechanism for the distribution of KI following a radiological release at Turkey Point 6 & 7 is inadequate.[9]

[9] CASE also quotes from a meeting between one of its members, Dr. Philip Stoddard, and Mr. Curtis Somerhoff, the Director of the Miami-Dade County Department of Emergency Management. (CASE's Motion at 6). Setting aside the question whether the cited statements are accurately reported, CASE does

(Footnote continued on next page)

Finally, CASE asserts (for the third time) its claim that evacuation in the event of a radiological emergency at Turkey Point Units 6 & 7 is impossible. It argues:

> [i]t is impossible to evacuate the almost 200,000 people in Homestead on three roads on 35 degrees of the compass in time to avoid contamination; it will take less than an hour to cover 10 miles under normal wind speed and usual direction. FPL ETE says it will take 2 to 11 hours to evacuate plus 1 to 6 hours to prepare. FPL and NRC never, repeat, never, directly addressed nor acknowldedged [sic] those numbers nor did they accept the Contention so it could be properly discussed. And shadow evacuation north of Homestead will block the northward movement so any one in Homestead will be trapped.

CASE's Motion at 7. This claim, twice rejected by the Board as not giving rise to a litigable contention, is not supported by any information in the Task Force Report and should be summarily rejected.[10]

2. There are no new developments that would render Amended Contention 2 admissible

Amended Contention 2, as set forth in CASE's Motion, alleges the "[f]ailure and omission of the FPL COL for the proposed Turkey Point nuclear reactors 6&7 to provide for the safe and orderly evacuation of the population during or following a nuclear event (unusual nuclear occurance [sic])."

CASE concedes that the Task Force Report actually contradicts the basis for this contention. The Task Force Report finds that "[t]he current regulatory approach for the evaluation of offsite EP following a natural disaster is robust and has proven its

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not explain how Mr. Somerhoff's statements in any way undercut the adequacy of the County's emergency plan with respect to the distribution and use of KI.

[10] CASE's assertion appears based on the argument that, in the event of a radiological emergency at Turkey Point, evacuation of the entire 10-mile plume exposure pathway EPZ must be ordered. In LBP-11-15, the Board expressly rejected that argument as calling for a change in the NRC regulations in 10 C.F.R. § 50.47(b)(10). LBP-11-15 at 10.

effectiveness following recent hurricanes, including Hurricane Katrina." Task Force Report at 60. CASE disagrees with the Task Force, arguing that "[h] aving lived in Miami, within 25 miles of Turkey Point since 1969, this writer can testify that preparing for **a hurricane has no comparison to** preparing for **a nuclear event**. We knew for days about Hurricane Andrew and had every opportunity to prepare for it. Such a comparison is specious, wrong and dangerous. Any planning order that adopts that premise will not be worth the paper on which it is written." CASE's Motion at 10, emphasis in original.

CASE, however, cites (out of context) the following statement in the Task Force Report: "The Task Force acknowledges that every situation will differ, so detailed preplanning in this area is not plausible" (Task Force Report at 61) as supporting the following comment by CASE: "***Exactly! Which is why not only should Turkey Point 6 & 7 not be built at Turkey Point, 3 & 4 should not be there either***." CASE's Motion at 12, emphasis in original. What the Task Force Report actually wrote was:

> While the U.S. EP framework has always noted that the plume exposure pathway EPZ provides a basis for expansion, insights from real-world implementation at Fukushima, including the realities of multiunit events, might further enhance U.S. preparedness for such an event. The Task Force acknowledges that every situation will differ, so detailed preplanning in this area is not plausible. As information and insights emerge about the challenges faced by Japanese officials while implementing protective actions around Fukushima, the NRC and its partners should evaluate those insights to identify enhancements to the decisionmaking framework in the United States.

Task Force Report at 61. The Task Force Report does not conclude that the formulation of emergency plans is impossible, but that applying the lessons from the Fukushima events may eventually lead to improvements in the Emergency Planning regime in this country.

Thus, the Task Force Report does not provide any support for re-examining Amended Contention 2.

CASE also cites, in support of reconsideration of Amended Contention 2, statements allegedly made at a the above-mentioned meeting involving Dr. Stoddard and Mr. Somerhoff, Director of the Miami-Dade County Department of Emergency Planning.[11] CASE's Motion at 12-15. However, CASE does not identify any facts or statements by Mr. Somerhoff that would undercut the Miami-Dade County's Emergency Plan for Turkey Point Units 6 & 7. All that CASE has to say about Mr. Somerhoff's apparent statements is that they show that "**Miami-Dade County's emergency evacuation plans are perfunctory and superficial. We are in trouble.**" CASE's Motion at 15, emphasis in original. CASE's conclusory pronouncement does not constitute material new information that could prompt reconsideration of the dismissal of Amended Contention 2.

3. There is nothing in the Task Force Report that supports reconsideration of the dismissal of Amended Contention 5

CASE's Motion describes Amended Contention 5 as asserting:

> Failure and omission of the FPL COL for the proposed Turkey Point nuclear reactors 6&7 analysis to consider or incorporate any scientifically valid projection for sea level rise and climate change through the end of this century and beyond.

CASE's Motion at 16. This contention was rejected by the Board in LBP-11-15 because the sources cited by CASE in support of its admission

[11] CASE asserts that "the transcript" of that meeting is contained in "Attachment 1." No such transcript was included with CASE's Motion, although a document entitled "Follow-up on meeting over Miami-Dade County Radiological Emergency Plan" said to be prepared by Philip Stoddard, Ph.D., Mayor of South Miami, was filed with the Motion.

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> (1) …fail to explain how the information relating to the Fukushima event supports an argument that the inundation of Turkey Point Units 3 and 4 is a plausible scenario; and (2) …fail to explain how, even if such inundation were to occur, it could adversely affect the safe operation of proposed Units 6 and 7 given the characteristics of the Turkey Point site and the design of the proposed Units.

L BP-11-15 at 16, footnote omitted. The Board found a further, independent reason for rejecting Amended Contention 5:

> CASE fails, in derogation of section 2.309(f)(1)(vi), to controvert a specific portion of FPL's COL application or otherwise explain why FPL's analyses or conclusions are incorrect or inadequate.

Id. at 16-17. CASE's Motion does not point to any findings or recommendations in the Task Report that could result in the need for the Board to reconsider its conclusions. To the contrary, CASE acknowledges that the Task Force Report fails to even mention sea level rise and climate change. CASE's Motion at 16. CASE complains:

> [sic] **subject to storm surge, hurricanes, sea level rise, not to mention that sits on top of the water supply for the entire** [sic] **Given this concern regarding natural disasters, it is difficult to understand why neither the Task Force, the NRC Staff nor FPL has ever acknowledged the Climate Change Study commissioned by the Miami-Dade County Board of County Commissioners and directed by Dr. Harold Wanless, a distinguished professor of Biology at the University of Miami. We live here, not a thousand miles away. Building two new reactors in a flood zone, on land already below sea level** [sic] **Florida Keys, can hardly be the result of a functioning administrative regulatory system divorced from industry influence.**

CASE's Motion at 17-18, emphasis in original. It defies comprehension how CASE could invoke the Task Force Report in support of its motion for reconsideration of Amended Contention 5, when the topic of the contention was not even discussed in the Report. The contention was appropriately dismissed and needs no re-examination.

In short, there is nothing in the Task Force Report that supports reconsideration of the Board's rejection of Amended Contentions 1, 2 and 5 and CASE's Motion seeking such reconsideration can only be described as frivolous.

II. CASE'S PROFFERED NEW CONTENTIONS MUST BE SUMMARILY REJECTED

The Board has specified, for the benefit of the parties, the requirements for filing new contentions in this proceeding. The Board wrote:

> A party seeking to file a motion or request for leave to file a new or amended contention shall file such motion and the substance of the proposed contention simultaneously. The pleading shall include a motion for leave to file a *timely* new or amended contention under 10 C.F.R. § 2.309(f)(2), or a motion for leave to file a *nontimely* new or amended contention under 10 C.F.R. § 2.309(c)(1) (or both), and the explanation for the proposed new or amended contention showing that it satisfies 10 C.F.R. § 2.309(f)(1). A motion and proposed new or amended contention as specified above shall be deemed timely under 10 C.F.R. § 2.309(f)(2)(iii) if it is filed within thirty (30) days of the date when the new and material information on which it is based first becomes available. If filed thereafter, the motion and proposed contention shall be deemed nontimely under 10 C.F.R. § 2.309(c). If the movant is uncertain, it may file pursuant to both, and the motion should cover the three criteria of section 2.309(f)(2) and the eight criteria of section 2.309(c)(1) (as well as the six criteria of section 2.309(f)(1)).

Initial Scheduling Order at 8 (emphasis in original).

In tendering proposed Contentions 9 and 10, CASE's Motion did not comply with the provisions in the Initial Scheduling Order regarding the submittal of new contentions, for CASE did not seek leave from the Board to file them, did not address the timeliness factors in 10 C.F.R. §§ 2.309(f)(2) and 2.309(c)(1) that apply to the admission of late-filed contentions, and did not seek to demonstrate that the proposed new contentions meet the admissibility requirements of 10 C.F.R. § 2.309(f)(1).

Moreover, CASE filed these new contentions without notice to or consultation with FPL, warranting rejection of the contentions. 10 C.F.R. § 2.323(b); LBP-11-15 at 6, n. 13, where the Board cautioned that "a moving party's future failure to comply with [the consultation] requirement will render its motion vulnerable to summary denial with prejudice."

Finally, neither of the proposed contentions meets the requirements in 10 C.F.R. § 2.309(f)(1). For these reasons, the proffered new contentions must be rejected.

A. Proposed New Contention 9 is on its face Inadmissible

Proposed new Contention 9 reads:

> All pending licensure procedures for all unlicensed nuclear reactors should be suspended for at least two years or until the NRC board of commissioners accepts the Task Force report and all near term and longer term recommendations are fully defined and impelmented [sic].

CASE's Motion at 18. Proposed Contention 9 is clearly outside the scope of this proceeding and seeks relief (suspension of licensing proceedings for all unlicensed reactors) that only the Commission, not this Board, can grant. Therefore, it must be dismissed for failure to comply with the requirements of 10 C.F.R. § 2.309 (f)(1)(iii). The contention also does not relate in any manner to the findings that the NRC must make to approve the Application, nor does it allege any deficiencies in the Application, thus it fails to satisfy the requirements of 10 C.F.R. §§ 2.309 (f)(1)(iv) and (vi). Nor is it supported by

any facts or expert opinions, as required by 10 C.F.R. § 2.309(f)(1)(v).[12] Proposed Contention 9 must accordingly be rejected.

B. Proposed Contention 10 is Inadmissible

CASE's new proposed Contention 10 asserts

> The Commission must establish and enforce new guidelines for the seperaton [sic] of the nuclear industry firms and representatives from participation in staff deliberations, decisions and actions.

CASE's Motion at 21. As justification for this contention, CASE charges, *inter alia*, that:

> In the year that CASE has been an intervenor in the FPL licensure of Turkkey [sic] Point 6 & 7, it has become apparent that there is a close relationshiep [sic] between the Company and the NRC staff. Responses to petitions from the two entities arrive simultaneously and are frequently almost verbatim copies of each other.

Id. at 22. It goes without saying that proposed Contention 10 is inadmissible for the same reasons that preclude acceptance of Contention 9 for litigation (i.e., it is clearly outside the scope of this proceeding; it seeks relief that the Commission, not this Board, can grant; it does not allege any deficiencies in the Turkey Point COL Application, nor relates in any manner to the findings that the NRC must make to approve the Application; and it is not supported by any facts or expert opinions. 10 C.F.R. §§ 2.309(f)(1)(iii)-(vi)). In addition, by making baseless accusations of collusion between the NRC Staff and the industry in general, and FPL in particular, the contention should be stricken by the Board as

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[12] CASE cites statements in the Task Force Report suggesting that changes be made to the NRC regulatory framework. CASE's Motion at 18-21. However, nowhere does the Task Force recommend that pending licensing proceedings be suspended. To the contrary, the Task Force Report, as quoted by CASE itself, concludes: "***…the Task Force concludes that continued operation and continued licensing activities do not pose an imminent risk to the public health and safety and are not inimical to the common defense and security."*** CASE's Motion at 24, quoting Task Force Report at 18, emphasis by CASE.

containing irrelevant and scandalous materials. *Private Fuel Storage, L.L.C.* (Independent Spent Fuel Storage Installation), LBP-05-20, 62 NRC 187, 228 (2003); *Power Authority of the State of New York* (James A. FitzPatrick Nuclear Power Plant; Indian Point, Unit 3), CLI-01-14, 53 NRC 488, 514 (2001).[13]

For these reasons, Proposed Contention 10 must be summarily dismissed.

III. THE BOARD SHOULD TAKE ACTIONS TO REQUIRE CASE TO COMPLY WITH THE NRC REGULATIONS AND THE BOARD'S DIRECTIVES

The Board is well aware that, in numerous occasions since the institution of this proceeding, CASE has acted in a manner inconsistent with the Commission regulations and the Board's directives. Just to cite one example, in its very first submittal, CASE sought to replace its initial Petition to Intervene and Request for Hearing with a revised Petition – ostensibly intended to correct a number of errors in the original Petition – that also included an unacknowledged new contention. *See* Memorandum and Order (Ruling on Petitions to Intervene), LBP-11-06, 73 NRC __ (Feb. 28, 2011) at 1, n.3.

CASE's Motion continues CASE's history of improprieties. In this filing CASE has: (1) raised a totally unmeritorious motion for reconsideration of the repeated dismissal of three of its contentions, despite express language in a Board's decision that precluded

[13] Without attempting to respond to CASE's scurrilous accusations, we note that the statement by NRC Chairman Gregory Jaczko that CASE cites as expressing a concern over "the problematic relationship between the NRC and the nuclear industry," CASE's Motion at 21-22, expresses no such concern. In his Tasking Memorandum outlining the charter of the Task Force's investigation, Chairman Jaczko wrote: "The task force efforts should be informed by some stakeholder input but should be independent of industry efforts." Memorandum from Chairman Jaczko to Executive Director of Operations, March 23, 2011, reproduced in Appendix B of Task Force Report at 77. However, in requiring that the Task Force efforts be independent of those of the industry, the Chairman was referring to other, then ongoing, voluntary efforts by industry organizations and licensees to address the implications of the Fukushima events, not expressing a concern about potential collusion between the Staff and the industry.

such a motion; (2) raised two proposed new contentions without seeking leave of the Board, without any notice to or consultation with the parties, and without addressing the express timeliness directives of the Board with respect to the filing of late contentions; (3) provided two new contentions directed at the Commission instead of the Board, outside the scope of this proceeding and frivolous in content; (4) falsely represented that it had engaged in good faith consultation with the other parties with respect to the motion for reconsideration, whereas in reality it only had announced its intention to file the motion and asked for a response from the other parties;[14] (5) falsely represented that FPL and the NRC Staff had accepted CASE's e-mail advising of its intentions as "Good Faith Consultation" (CASE's Motion at 3) when no such acceptance had taken place; (6) failed to comply with the electronic filing requirements to which all parties are subject and which all parties to this proceeding (except for CASE) seem to be able to meet without difficulty; (7) filed a pleading that was late, rife with typographical errors and full of garbled sentences and paragraphs; and (8) filed an unauthorized, and even later, "Revised" version of the original Motion without leave of the Board which did not correct all the errors in the Motion and which made substantial modifications to the original text, despite representing to the Board and parties that no information had been changed.

FPL is concerned that CASE's inability or unwillingness to abide by the Commission requirements is imposing an unnecessary burden on the Board and the other parties. While FPL is loath to move for sanctions against a citizen group of intervenors,

[14] It has been held that the "sincere effort to contact other parties in the proceeding and resolve the issue(s) raised in the motion" required by 10 C.F.R. §2.323(b) is not satisfied by a party merely advising the other parties of its intention to file a motion and asking the other parties whether they will agree to or oppose the motion. *Entergy Nuclear Vermont Yankee, L.L.C., and Entergy Nuclear Operations, Inc.* (Vermont Yankee Nuclear Power Station), LBP-06-5, 63 NRC 116, 129-131 (2006). That is precisely what CASE has admittedly done in connection with its instant motion for reconsideration. *See* CASE's Motion at 2-3.

the repeated and flagrant nature of CASE's failure to comply with Commission requirements and Board orders cause FPL to urge that that the Board exercise its powers under 10 C.F.R. § 2.319 to bring CASE into compliance with the rules by which all parties to NRC proceedings, including intervenors, must abide. Among the actions that the Board could take, for example, are requiring that all future CASE filings be accompanied by a sworn statement by CASE's representative that CASE has reviewed, understood, and complied with all NRC procedural requirements and Board orders, and requiring that CASE to submit its proposed filings to a licensed attorney for review prior to filing. Additional or different measures are, of course, within the Board's discretion.

CONCLUSION

While paying lip service to the Task Force Report, CASE's Motion has provided no link between the Report and any deficiencies in the Application. Moreover, CASE's Motion is deficient, both procedurally and substantively; accordingly, reconsideration of the Board's rejection of Amended Contentions 1, 2 and 5 is not warranted. Also, CASE's proposed new contentions are so flawed that they must be rejected outright. Finally, the Board should take corrective actions against CASE pursuant to 10 C.F.R. § 2.319.

Respectfully submitted,

/Signed electronically by Matias F. Travieso-Diaz/

Mitchell S. Ross
James M. Petro, Jr.
FLORIDA POWER & LIGHT COMPANY
700 Universe Blvd.
Juno Beach, FL 33408
Telephone: 561-691-7126
Facsimile: 561-691-7135
E-mail: mitch.ross@fpl.com
James.petro@fpl.com

Steven Hamrick
FLORIDA POWER & LIGHT COMPANY
801 Pennsylvania Avenue, NW Suite 220
Washington, DC 20004
Telephone: 202-349-3496
Facsimile: 202-347-7076
E-mail: steven.hamrick@fpl.com

John H. O'Neill, Jr.
Matias F. Travieso-Diaz
PILLSBURY WINTHROP SHAW PITTMAN LLP
2300 N Street, NW
Washington, DC 20037-1128
Telephone: 202-663-8142
Facsimile: 202-663-8007
E-mail: john.o'neill@pillsburylaw.com
matias.travieso-diaz@pillsburylaw.com

Counsel for FLORIDA POWER & LIGHT COMPANY

August 20, 2011

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

Before the Atomic Safety and Licensing Board

In the Matter of	)	
	)	
Florida Power & Light Company	)	Docket Nos. 52-040-COL
	)	52-041-COL
(Turkey Point Units 6 and 7)	)	
	)	ASLBP No. 10-903-02-COL
(Combined License)	)	

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing "Florida Power & Light's Response Opposing CASE's Motion For Reconsideration and CASE's Proffered New Contentions" were provided to the Electronic Information Exchange for service to those individuals listed below and others on the service list in this proceeding, this 20th day of August, 2011.

Administrative Judge
E. Roy Hawkens, Esq., Chair
Atomic Safety and Licensing Board
Mail Stop T-3 F23
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001
Email: erh@nrc.gov

Administrative Judge
Dr. Michael Kennedy
Atomic Safety and Licensing Board
Mail Stop T-3 F23
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001
Email: michael.kennedy@nrc.gov

Administrative Judge
Dr. William Burnett
Atomic Safety and Licensing Board
Mail Stop T-3 F23
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001
Email: wxb2@nrc.gov

Secretary
Att'n: Rulemakings and Adjudications Staff
Mail Stop O-16 C1
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001
hearingdocket@nrc.gov

Office of Commission Appellate Adjudication
Mail Stop O-16 C1
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001
E-mail: OCAAMAIL@nrc.gov

Lawrence D. Sanders
Turner Environmental Law Clinic
Emory University School of Law
1301 Clifton Road
Atlanta, GA 30322
Email: Lawrence.Sanders@emory.edu

Robert M. Weisman, Esq.
Sarah Price, Esq.
Patrick D. Moulding, Esq.
Office of the General Counsel
Mail Stop O-15 D21
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001
E-mail: Robert.Weisman@nrc.gov
Sarah.Price@nrc.gov
Patrick.Moulding@nrc.gov

Gregory T. Stewart
Nabors, Giblin & Nickerson, P.A.
1500 Mahan Drive, Suite 200
Tallahassee, Florida 32308
E-mail: gstewart@)ngnlaw.com

Barry J. White
Authorized Representative
CASE/Citizens Allied for Safe Energy, Inc.
10001 SW 129 Terrace
Miami, Florida 33176
Email: bwtamia@bellsouth.net

/Signed electronically by Matias F. Travieso-Diaz/

Matias F. Travieso-Diaz